

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

77-2045

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IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT OF NEW YORK

Civil Action, Docket No. 77-2045

ROY SCUSTER,
Petitioner-Appellant,

v.

STATE OF NEW YORK,
Respondent-Appellee.

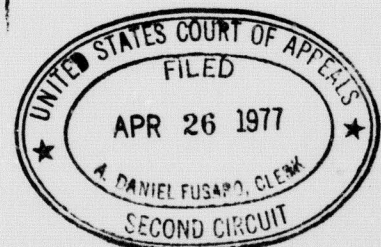
Pro Se Appeal From
U.S.D.C., S.D.
Re: 76 Civ. 4185

B
A/S

Petitioner-Appellant's Pro Se Brief And Appendix

For

Declaratory Judgment



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
LAWS CITED	i-iii
NATURE OF INSTANT APPEAL	1
STATEMENT	1-2
FACTS: INTRODUCTORY	2-8
FACTS: INSTANT ACTION	8-11
ARGUMENT: This Court should hold that relator's case constitutes an exception to the Eleventh Amendment granting a State immunity from suit by a citizen in federal court; for,	
I. The State of New York rendered itself incompetent to adjudicate relator's proposed suit against it	12-19
II. The State of New York cannot justify opposition to the exception to the Eleventh Amendment relator seeks	20-29
III. The State of New York, and all other States, would benefit, without sustaining any injury, by said exception	30-32
IV. This Court has the authority to correct, and should correct, the unintentional oversight of Congress in failing to include an exception to the Eleventh Amendment, allowing the victim of State-Committed federal felonies to sue the State in federal court	33-36
CONCLUSION	37-40
RELIEF SOUGHT	40-41
APPENDIX	
Memorandum Decision, U.S.D.C., S.D.....	42-44
Order, U.S.D.C., S.D.....	45
Notice of Appeal	46-47
Law Clerk's Memorandum	48
Forma Pauperis Affidavit	49-50
Application for Certificate of Probable Cause ..	51
Affidavit of Service	52

LAWS CITED

STATUTES

N.Y.S. Correction Law, §383.

18 U.S.C. §§241, 242.

CONSTITUTION

U.S. Const., 5th Amend.

U.S. Const., 6th Amend.

U.S. Const., 8th Amend.

U.S. Const., 11th Amend.

U.S. Const., 14th Amend.

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People ex rel. Schuster v. Vincent, 33 N.Y. 2d 1009 (1974), 353 N.Y.S. 2d 969.

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To same effect --

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Foltis, Inc. v. City of New York, 287 N.Y. 1-8, 116, 38 N.E. 2d 155, 460.

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Hogan v. Manhattan Ry. Co., 149 N.Y. 23, 43 N.E. 925, 926-927, 52 L.R.A. 922.

Reehil v. Fraas, 129 App. Div. 563, 564, 114 N.Y.S. 17, 18, rev'd on other grounds, 197 N.Y. 64, 90 N.E. 340.

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S.C. 11 Alb. L.J. 346.

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N.Y.S. 124 (1927), 246 N.Y. 258, 158 N.E. 613 (1927).

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v.
STATE OF NEW YORK, Respondent-Appellee.

Pro Se Appeal From
U.S.D.C., S.D.
Re: 76 Civ. 4185

NATURE OF INSTANT APPEAL

This is an appeal from the MEMORANDUM DECISION, dated February 14, 1977 and filed February 15, 1977, of the Hon. Judge Lee P. Gagliardi, a Justice of the United States District Court for the Southern District of New York, denying, pursuant to Rule 12 (b) (6) Fed. R. Civ. P., above-named appellant's pro se motion for judgment declaring that his case constitutes an exception to the Eleventh Amendment of the Constitution of the United States of America.

STATEMENT

Appellant Roy Schuster is the relator herein; is a layman untrained in the law; and is acting perforce as his own lawyer, for the reason that law firms contacted insisted on presenting his case to the New York State Court Of Claims, thereby depriv-

ing him of proper relief, and the public of a jury-trial disclosure of facts crucial to efficacious resolution of state, and interstate, recidivism.

Relator has not applied for certiorari in this action for declaratory judgment by this Court, either prior or subsequent to commencement in the United States District Court for the Southern District of New York.

FACTS: INTRODUCTORY

Relator, upon conviction of Murder Two and sentence therefor of 25 years to life, was received in Sing Sing Prison on November 2, 1931, and was thereafter successively transferred to and received in Attica Prison on April 4, 1933, Clinton Prison on January 19, 1935, Dannemora State Hospital on September 9, 1941, and Green Haven Correctional Facility on March 28, 1972.

[Relator was received in New York's Tombs Prison on June 10, 1931 to await trial and remained there until said transfer to Sing Sing.]

Said transfer of relator to said hospital was corruptly motivated. Upon intelligence that relator was moving to retain the services of a lawyer in connection with submission to court of his prepared deposition evidentially demonstrating that officials of Clinton Prison were in effect coer-

cively conditioning inmates therein for future recidivism, the-then warden Martin of said prison instituted against relator an intraprisn lunacy proceeding composed of personnel of said prison and said hospital. By means of said proceeding -- conducted in deliberate violation of all crucial constitutional safeguards appertaining thereto -- said officials accomplished said transfer of relator to said hospital and thereby the effective suppression of said deposition.

Relator, upon reception in said hospital, was held completely incommunicado (in all matters of a legal nature) for the first three years and intermittently thereafter, and, during his entire detention of 31 years therein, was subjected to cruel and sadistic treatment as a direct result of his unflagging struggles to seek relief in courts of law anent said detention.

Relator, during his detention in said hospital, became eligible for parole in 1948. The Parole Board then denied him parole under circumstances strongly indicating corrupt collusion with the director of said hospital, in that they accepted, from said director, a short one-sentence typewritten opposition to parole of relator [which probably read: "This patient is in need of further care and treatment."]; but, in response to relator's request thereupon to be granted the opportunity to show cause why he should be paroled forthwith, they asked him to "wait outside".

Relator, in the matter of appeal of said lunacy proceeding, having in vain exhausted his state rights, applied for a habeas corpus hearing in the United States District Court in Auburn, N.Y. The Hon. Edmund Port, judge thereof, dismissed said application in a MEMORANDUM DECISION dated January 27, 1966, on ground relator's constitutional right of due process had not been violated in state courts.

The United States Court of Appeals for the Second Circuit reversed said judgment in a decision dated February 28, 1967 and ordered said district court to grant relator an evidentiary hearing, with counsel assigned, on the question of whether relator's said transfer to said hospital was corruptly motivated.

Said assigned counsel, during said mandated hearing held on July 12, 1967, abandoned said question, without relator's consent and foreknowledge; said Judge Port, in a DECISION AND ORDER dated December 8, 1967, ruled that relator had not met his burden of proving said transfer to said hospital corruptly motivated; and said counsel appealed on ground that relator should have been accorded a jury trial on the proceeding that accomplished his transfer to aforesaid hospital.

The United States Court of Appeals for the Second Circuit, upon said appeal, reversed said Judge Port and

mandated a full-scale jury-trial proceeding for relator on the question of his sanity and the issues he raises. Schuster v. Herold, 410 F.2d 1071 (1969).

The State, on March 28, 1972, through its agent the director of said hospital, mooted said mandated proceeding eight days before relator was scheduled to appear in court therefor, by rushing him to Green Haven Correctional Facility.

Relator, at said Facility, on being produced before the Parole Board in May, 1972, submitted to said Board a statement in his handwriting saying, in substance, that he felt he was legally entitled to absolute discharge and that his conscience would not allow him to accept supervision of said Board on ground the evidence indicated beyond reasonable doubt (1) that he was not in need of said supervision; (2) that said supervision would serve only to obstruct and frustrate honorable rehabilitation; and (3) that, in view of said Board's corrupt denial to him of parole in 1948, said Board was not morally fit to supervise anyone, certainly not him. To this, he added that he would willingly accept the supervision of law which applied equally to each of his fellow citizens. Said Board thereupon denied said absolute discharge.

Relator's aforementioned assigned counsel appealed the matter to the Supreme Court of Dutchess County; and the Honorable Judge Hawkins of said county court, in a

decision dated December 15, 1972, ordered said Board to discharge relator expeditiously on unencumbered parole. People ex rel. Schuster v. Vincent, 73 Misc. 2d 653, 342 N.Y.S. 2d 18 (1972).

The State appealed from said decision of Judge Hawkins, and the New York State Supreme Court, Appellate Division, 2d Dep't, reversed unanimously "on the law", in a decision dated June 18, 1973.

People ex rel. Schuster v. Vincent, 42 App. Div. 2d 596 (2d Dep't 1973), 344 N.Y.S. 2d 735.

Relator did not learn of said decision of the Appellate Court until some four months had passed; and, then, upon learning that said assigned counsel had now filed notice of appeal, relator, in a certified letter dated November 23, 1973, released said counsel from further representation of him, after first himself filing notice of appeal and submitting an application to the New York State Court of Appeals for leave to appeal and to proceed in forma pauperis.

The State Court of Appeals [People ex rel. Schuster v. Vincent, 33 N.Y. 2d 1009 (1974), 353 N.Y.S. 2d 969] denied said application on ground it was not timely made, notwithstanding the fact that relator had submitted said notice of appeal and said application as soon as he learned of said

decision of the Appellate Court and of his assigned counsel's failure to file notice of appeal therefrom.

Relator thereupon instituted a habeas corpus action under 28 U.S.C. §2254 in the U.S. District Court, S.D. of New York (filed April 17, 1974 as Pro Se 74 Civ. 1705), in which he petitioned said Court for the absolute discharge to which he believed he was legally and morally entitled in 1953 -- at the latest.

Relator, on November 22, 1974, was produced before the Hon. Judge Owen of said district court and offered a special "release agreement" (in which the Attorney General's Office and a representative of the Parole Board participated), relieving relator of the usual restrictions and obligations of parole, and stipulating that relator could not ever be returned to prison except on conviction of a new crime. Upon relator's rejection of said "release agreement", said judge held his decision in abeyance in order to give relator an opportunity to reconsider the said offer at his leisure.

Relator, in a motion dated January 14, 1975, notified the Court that his rejection of said "release agreement" still stood and requested that the Court decide the matter on the merits of the arguments set forth in his brief.

The said Hon. Judge Owen, in a MEMORANDUM AND ORDER #42111 dated March 25, 1975, denied relator's petition for absolute discharge and thereupon dismissed his writ.

Relator, on April 2, 1975, filed notice of appeal with said district court and applied thereto for a Certificate of Probable Cause, and for permission to proceed on appeal in forma pauperis -- which were granted on April 7, 1975.

The United States Court of Appeals for the Second Circuit of New York, in an order dated September 23, 1975, commanded the warden of the Green Haven Correctional Facility to discharge relator at once unconditionally. Schuster v. Vincent, 524 F.2d 153 (2d Cir. 1975), not appealed.

FACTS: INSTANT ACTION

Relator, on August 19, 1976, along with a motion for leave to proceed in forma pauperis, filed with the United States District Court for the Southern District of New York, his pro se motion for declaratory judgment on the question of whether his case constitutes an exception to the Eleventh Amendment prohibition against a citizen suing a state in federal court.

The Hon. Judge Gagliardi, a Justice of said Court,

was assigned to the case; and, in a MEMORANDUM DECISION dated February 14, 1977, and filed February 15, 1977, said judge dismissed relator's said motion for declaratory judgment, pursuant to Rule 12 (b) (6) Fed. R. Civ. P.

Relator, on February 22, 1977, (1) filed notice of appeal, with the clerk of the U.S.D.C., S.D., from each and every part of Judge Gagliardi's said holding; and (2) applied to said judge for a Certificate of Probable Cause and leave to appeal in forma pauperis.

Said Judge Gagliardi, on April 5, 1977, from a hospital bed, authorized his law clerk Kenneth Raisler to endorse "No objection" to this appeal.

Relator, on April 21, 1977, submitted, to the Office of the clerk of the United States Court of Appeals, the required Civil Appeal Pre-Argument Statement and Transcript Information.

Relator, on April 23, 1977, received, from the clerk of the U.S.C.A., 2d Cir., instructions for proceeding on appeal, along with his appeal Docket NO. 77-2045.

QUESTIONS PRESENTED

1. Do relator's allegations (cited supra) against the State of New York (if accepted as true) satisfy the necessary and sufficient requirements of the legal definition of kidnapping?

2. Does relator have "presumptions of law" that said allegations are true and beyond current and subsequent legal attack?

3. Do said "presumptions of law", inter alia,

a) render the State of New York incompetent to exercise jurisdiction over relator's instant proposed suit against said State?

b) constitute in effect a waiver by said State of its Eleventh Amendment immunity?

c) involve, as an inescapable inference therefrom, consent of said State to be sued in federal court by relator, in the same sense that a hired killer in effect consents to the lawful penalty therefor? and

d) obligate federal courts to accept said jurisdiction?

Relator believes that the Eleventh Amendment prohibition against a citizen suing a State in federal court was never intended -- by Congress or judicial decisions -- to apply in face of the evidence law and circumstances centered in his case; and, in support of said belief (and in rebuttal of Judge Gagliardi's reasons for denying relator's motion for the declaratory judgment he seeks), he respectfully submits, for the consideration of this Court, the arguments briefly set forth hereinbelow:

ARGUMENT

THIS COURT SHOULD HOLD THAT RELATOR'S CASE CONSTITUTES AN EXCEPTION TO THE ELEVENTH AMENDMENT GRANTING A STATE IMMUNITY FROM SUIT BY A CITIZEN IN FEDERAL COURT; for,

I

The State Of New York Rendered Itself Incompetent To Adjudicate Relator's Proposed Suit Against It; for,

A). Accredited agents of said State -- and therefore said State -- perpetrated, inter alia, the federal crime of kidnapping against relator; for,

1. Said agents, clothed with the State's power, and acting for and in behalf of said State, unlawfully and against his will, accomplished relator's transfer from Clinton Prison to Dannemora State Hospital; for,

a). The lunacy proceeding which accomplished said transfer was instituted by prison officials to conceal the confiscation and suppression of a deposition exposing officially sponsored activities of said officials calculated to promote recidivism, which relator had prepared, inter alia, for submission to a court of law.

b). Said lunacy proceeding was conducted in deliberate violation of all constitutional safeguards.

2. The officials of said hospital, clothed with the State's power, and acting for and in behalf of the State, unlawfully and against his will, detained relator therein, on a fictitious allegation of insanity, completely incommunicado for the first three years, and intermittently thereafter, in all matters of a legal nature.

3. The Office of the Attorney General of the State of New York, and the courts of said State, clothed with the State's power, and acting for and in behalf of the State, cooperated fully with said prison and hospital officials to end of concealing the facts of said transfer and detention.

IAW

"Whoever....acts in the name of and for the State, and is clothed with the State's power, his act is that of the State."

Ex parte Virginia, 100 U.S. 339, 347, 25 L.Ed. 676 (1879).

"Wilful and intentional detention of a person for an unlawful purpose against his will and without authority of law constitutes the crime of kidnapping."

People v. Florio, 301 N.Y. 46, 92 N.E. 2d 881, 17 A.L.R. 2d 993 (1950).

B). The State of New York, through its accredited agent the Attorney General, created the presumption of law against itself: that all of relator's allegations material to said kidnapping must be regarded as true and beyond subsequent legal attack; for,

1. Said State, by evasion, consistently and repeatedly ignored relator's allegations both to **state and federal** courts -- an example of which is contained in his traverse dated July 9, 1974, in which he alleged:

a). That in 1941 officials of Clinton Prison, in violation of law, suppressed his deposition to a court of law, charging said officials with illegal activities conducive to conditioning inmates thereof for future recidivism.

b). That, to accomplish said suppression, said officials, under color of §383 of the Correction Law, employed an intraprison lunacy proceeding and transfer of him to Dannemora State Hospital.

c). That said officials conducted said proceeding in violation of crucial constitutional safeguards.

d). That said lunacy proceeding was tainted to extent of amounting to a conspiracy to assure his virtual "burial" in said hospital, in that a senior doctor of said

hospital (Dr. Schwartz) collaborated in said proceeding with the physician (Dr. Casswell) of said prison.

e). That his detention in said hospital, against his will and without authority of law, was tantamount to detention of a kidnapped victim compounded with physical brutality and mental torture calculated to drive him to raving lunacy.

f). That, in 1948, when eligible therefore, the Parole Board corruptly denied him parole.

g). That all judgments adverse to him, derived, directly or indirectly, from proceedings inextricable rooted in the suppression of aforesaid deposition, were "fruit of the poisonous tree", and hence devoid of merit and probative value.

h). That, in legislating §383 of the Correction Law, the legislators of the State of New York did not explicitly, or implicitly, authorize its invocation for the purpose of suppressing a deposition directed to a court of law.

2. It has long been established that failure to answer allegements, when the party against whom such are directed has no tenable excuse for not so doing, creates

a presumption of law that the allegations are true and beyond subsequent legal attack.

LAW

Evidence not contradicted directly or by legitimate inferences not opposed to probabilities -- is conclusive. Deregibus v. Saracco, 233 N.Y.S. 99, 225 App. Div. 354 (1929)

Uncontradicted and unimpeached testimony cannot be disregarded by court arbitrarily or capriciously, but for judicial purposes such testimony is entitled to belief. Berger v. Berger, 73 N.Y.S. 2d 384. Coppo v. Coppo, 297 N.Y.S. 744, 163 Misc. 249 (1937).

Uncontroverted testimony must be taken most strongly against the party who is in a position to contradict it, and undisputed evidence, which is positive, direct, and not incredible, must be deemed established. Heinssenbittel v. Comnas, 177 N.Y.S. 2d 850, 14 Misc. 2d 509 (1958).

To same effect --

Maloney v. State, 49 N.Y.S. 2d 856, aff'd 55 N.Y.S. 2d 846, App. Div. 802 (1944) Skibicki v. Diessel Const. Co., 290 N.Y.S. 2d 83, Misc. 2d 955, aff'd 290, 29 A.D. 2d 1050 (1967). Bogorad v. Fitzpatrick, 329 N.Y.S. 2d 874, 38 A.D. 2d 923, aff'd 341 N.Y.S. 2d 314, 31 N.Y. 2d 984, 293 N.E. 2d 561 (1972).

The act of suppressing relator's 1941 deposition in deliberate defiance of the law contains within itself a sufficient basis for an inference of corrupt motivation against the initial suppressors thereof.

Foltis, Inc. v. City of New York, 287 N.Y. 1-8, 116, 38 N.E. 2d 155, 460.

Since the submission or suppression of relator's said 1941 deposition was in the exclusive control of aforesaid Clinton Prison officials, and since suppression thereof would not ordinarily have happened without their guilt, the facts were sufficient to justify an inference of their guilt and to have cast upon them the burden of coming forward with an explanation.

Galbraith v. Busch, 267 N.Y. 230, 234, 196 N.E. 36, 38,
Hogan v. Manhattan Ry. Co., 149 N.Y. 23, 43 N.E. 925,
926-927, 52 L.R.A. 922.

"Failure of a party to produce evidence which conclusively determine the fact in dispute may give rise to a conclusive inference, i.e., to a presumption of law, that the fact is not as he claims it to be or is as claimed by the other side; as where a party fails to produce a chattel or a writing which is in his possession and would, if produced, show the fact indisputably...."

Reehil v. Fraas, 129 App. Div. 563, 564, 114 N.Y.S. 17, 18, rev'd on other grounds, 197 N.Y. 64, 90 N.E. 340.

"This Court cannot hold that petitioners were constitutionally free to ignore all the procedures of law..... Respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom."

Justice Potter Stewart, in an Alabama contempt of court case (June 12, 1963).

3. The lack of due process anent aforesaid transfer to Dannemora State Hospital, and detention therein, taken in conjunction with the corrupt motivation connected therewith, also tend to leave the State with no tenable defense against the charge of having kidnapped relator from Clinton Prison and of having thereupon virtually "buried" him in said hospital for 31 years to end of accomplishing suppression of his aforesaid 1941 deposition.

LAW

Lack of due process, and of competent jurisdiction, renders subsequent proceedings derived from this lack, against the accused, void.

Reynolds v. Orvis, 7 Cow. 269.

Ex Parte Lange, 18 Wall. 163.

Virginia v. Rives, 100 U.S. 313.

Ex Parte Siebold, 100 U.S. 371.

People ex rel. Tweed v. Liscomb, 60 N.Y. 559.

S.C. 11 Alb L.J. 346.

18 U.S.C. §§241,242.

The poisonous tree doctrine has a long history. Its development reflects the firm belief that the Government should gain no advantage from its illegal activity and that, to prevent such gain, the courts must cut off the indirect use of all illegally obtained evidence which has any evidentiary value, regardless whether it is physical or testimonial.

Nardone v. U.S., 308 U.S. 388.

Silverthorne Lumber Co. v. U.S., 251 U.S. 385.

Kastigar v. U.S., 406 U.S. 441.

TO SAY THAT A STATE IS COMPETENT TO ADJUDICATE ISSUES STEM-
MING FROM ITS GUILT OF FEDERAL CRIMES AGAINST A CITIZEN-
PLAINTIFF IS TO SAY THAT THE AMERICAN CONSTITUTIONAL CONCEPT
OF JUSTICE DENIES THE NEED OF FEDERAL COURTS OF LAW.

II

The State Of New York Cannot Justify Opposition To The Exception To The Eleventh Amendment Relator Seeks; for,

A). Judge Gagliardi's objection to declaring relator's case an exception to said Amendment on ground that "the Eleventh Amendment to the United States Constitution is an absolute bar" to relator's proposed "suit against the State of New York in federal court" -- is without merit; for,

1. Said Amendment neither explicitly nor implicitly grants a State immunity from such a suit, when the State has committed a major federal felony against the citizen-plaintiff.

2. Congress, in establishing said Amendment, certainly did not intend that, under said Amendment, a State might commit a major federal felony against a citizen, without thereby rendering itself incompetent to exercise jurisdiction over a suit against it instituted by the citizen-victim of such felony.

B). Judge Gagliardi's objection to declaring relator's case an exception to said Amendment on ground that "the Supreme Court has consistently held 'that an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State" -- is without merit; for,

The judicial decisions upholding the Eleventh Amendment are inapplicable to relator's case; for,

a). None of them involve perpetration of a major federal felony.

b). None of them either hold or imply that a State may employ its immunity under said Amendment as a shield against suit in federal court by a citizen against whom the State has perpetrated a major federal felony.

C). Judge Gagliardi's objection to declaring relator's case an exception to said Amendment on ground that "There is no indication that the State of New York has consented to waive its immunity in this case." -- is without merit; for,

1. Said State in effect consented to waive said immunity, when it committed major federal felonies against relator and thereby rendered itself incompetent to exercise jurisdiction over a suit stemming from the injuries to relator sustained from said felonies.

2. Said State in effect consented to waive said immunity, when it knowingly employed and empowered corrupt agents to perpetrate such felonies in its behalf.

3. Said State in effect consented to waive said im-

munity, when through said agents it consistently compounded said felonies against relator -- and to date is still so doing -- to end of preventing its deliberate recidivism-promoting activities from coming into the spotlight of a jury-trial suit against it in federal court.

4. Said State, in 1, 2 and 3 directly supra, in effect also consented to waive said immunity, in the same sense and degree that any citizen who commits a major felony consents to waive the right of a law-abiding citizen to immunity from punishment mandated for those who commit such felonies -- otherwise we have the social, moral, and political situation of the Eleventh Amendment allowing a State to employ and empower corrupt agents to commit in its behalf heinous crimes against citizens of this nation.

D). Judge Gagliardi's objection to declaring relator's case an exception to said Amendment on ground that his allegation of a low probability of his receiving justice in the matter in state courts does not warrant said exception, since he is "only suing the State of New York to recover damages for past mistreatment" -- is without merit; for,

1. Relator, by means of said suit, seeks to disclose to the taxpayers of this State, and to those of other States of our nation -- during the course of a federal jury-trial litigation of the matter -- evidence crucial to an efficacious

resolution of the longstanding problem of recidivism.

2. Relator, by means of said suit, seeks to obtain from such jury a punitive damage award for past mistreatment and constitutional deprivations, sufficient to motivate legislation tending to exterminate the job-security-actuated recidivism-promoting activities of corrupt agents of this State -- and of such in other States of this nation.

3. The evidence in this case indicates an extremely high probability that justice to relator, and to the taxpayers of this nation, in this matter, cannot be realized by any means other than the exception to the Eleventh Amendment relator seeks; for,

No means other than a federal jury trial of the issues involved would effectively spotlight the outrageous felonies corrupt officials of this State have committed to end of promoting recidivism and thereby job-security.

RELATOR'S ANSWERS TO OBJECTIONS TO SAID EXCEPTION OTHER THAN THOSE RAISED BY JUDGE GAGLIARDI:

E). Objection to said exception on ground it would expend itself on the State Treasury is without merit; for,

The facts that would be revealed during a jury trial of

relator's proposed suit in federal court against the State of New York would tend to reduce disbursements from the State Treasury in a ratio of at least \$1000.00 for every \$1.00 a jury would award relator; for,

Said facts would demonstrate that the State's programs of rehabilitation, as currently conducted (programs which are not preceded by ones of regeneration), are an unnecessary and futile drain of millions of dollars from said Treasury; for,

1. Such facts would show, beyond reasonable doubt, that programs of rehabilitation, not preceded by programs conducive to regeneration, serve, except in rare cases, to encourage prisoners to return to crime upon their release from servitude; for,

a). Such programs of rehabilitation, except in rare cases, tend to persuade unregenerated prisoners that, with the newly-gained knowledge from said programs, they can, upon their release from servitude, return to careers of crime with a high probability of impunity.

b). Such programs of rehabilitation, not constructed to prepare prisoners to compete successfully in the "outside" labor market (a fact the prisoners soon learn), tend to obstruct and frustrate regeneration; for,

Said programs tend to induce unregenerated prisoners to relinquish any hope they might have entertained of leading a law-abiding life upon restoration of freedom.

c). Such programs of rehabilitation, by virtue of a) and b) directly supra, tend to leave unregenerated prisoners easy prey to the prison-employee job-security racket.

[Employees of the Department of Correction, realizing that a considerable reduction in recidivism would necessitate the closing of some correctional facilities, deliberately discourage prisoners from preparing themselves for a law-abiding way of life, and thereby corruptly promote, at the expense of the taxpayers, their own job-security.]

2. Such facts would show, beyond reasonable doubt, that, to achieve regeneration of prisoners,

a) the current practice of mandating criminal sentences in terms of time must be exchanged for a system of sentences in terms of merits earned for having passed carefully constructed and supervised written examinations in subjects conducive to regeneration, thereby providing the incentive 99% of prisoners need to achieve regeneration, and the reasonable assurance the public has a right to: that prisoners are reformed before being restored to freedom; and

b) the current prison personnel, corruptly dedicated to job-security, must be replaced by a personnel dedicated to and qualified for the teaching of the academic subjects sufficient and necessary to the consummation of regeneration, thereby providing the prisoners with the intelligence, character, and self-esteem, to demonstrate to their community and country that, despite any and all contrary persuasions, crime and lesser antisocial behavior is for nincompoops, not for them.

F). Objection to said exception on ground of public interest is without merit; for,

Public interest can best be served by relator's suit being litigated before a jury in federal court; for,

1. Said suit involves major federal felonies perpetrated against relator by highly-placed agents of the State of New York.

2. Said suit, litigated before a jury in federal court, would produce the information and evidence crucial to successful resolution of the 80% recidivism-problem currently burdening the residents of the State of New York, in terms of crime and taxes.

3. Said suit, litigated in the State Court of Claims,

would tend to serve as an instrument for the further suppression of said information and evidence contained in relator's aforesaid 1941 deposition.

G). Objection to said exception on ground it would precipitate a flood of suits against a State is without merit; for,

A flood of such suits, under said exception, is probable only if a State insists on committing a flood of major federal felonies against a citizen; for,

A State, to avoid an unreasonable number of such suits, under said exception, need but cease committing an unreasonable number of said crimes; for,

The number of such suits, under said exception, would necessarily be in direct proportion to the number of said crimes.

H). Objection to said exception on ground justice could be obtained in the State Court of Claims is without merit; for,

1. There is a high probability that the State Court of Claims either would not award punitive damages, or would award such in a nominal sum insufficient to deter the State from repeating such crimes as kidnapping; for,

Punitive damages, commensurate with the wrongful

illegal and inexcusable injury the State inflicted upon relator, would tend to point up the State's guilt of kidnapping.

2. There is a high probability that, in the unlikely event the State Court of Claims did give relator an appropriate award, the State Court of Appeals would, upon the State's motion, either reverse or drastically reduce such award, to end of enshrouding the crime of kidnapping; for,

a). The probability is high that the judges of said court would be reluctant to act in a manner conducive to spotlighting the crime of kidnapping; for,

Said crime was committed by powerful politicians, the majority of whom belong to the same political party as said judges.

b). A majority of the judges of said court of appeals are themselves assessories to said kidnapping; for,

Said judges, in effect, by means of their no-comment denials in the case, employed the powers of their court to suppress the facts of said kidnapping.

I). Objection to said exception on ground of doctrine of comity is without merit; for,

1. Said doctrine cannot be stretched Constitutionally to the length of investing a State in effect with the prerogative of immunity from a suit in federal court, even in event it commits a major federal felony against a citizen, and thereby renders itself incompetent to exercise jurisdiction over a suit against it, instituting the victim of its crime.

2. Said doctrine cannot be applied, in relator's case, without unconstitutionally nullifying the valid application, to his case, of the long-established doctrine of the "poisonous tree".

THERE ARE THEREFORE NO TENABLE OBJECTIONS TO HAVING RELATOR'S PROPOSED SUIT AGAINST THE STATE OF NEW YORK LITIGATED IN FEDERAL COURT BEFORE A JURY; AND, WHEN EXAMINED IN RELATION TO THE SPIRIT OF DUE PROCESS, FAIR PROCEDURE, AND PUBLIC INTEREST, ALL SAID OBJECTIONS MUST NECESSARILY BEAR THE UNMISTAKABLE MARK OF AN ATTEMPT TO KNIFE THE HEART OF JUSTICE AND THEREFORE THE VERY SOUL OF THE CONSTITUTION.

III

The State Of New York, And All Other States, Would Benefit, Without Sustaining Injury, By Said Exception To The Eleventh Amendment; for,

A). The Eleventh Amendment, with said exception, would tend to force the States to render due respect to the 5th, 6th, 8th, and 14th Amendments, and to federal by-laws supplemental thereto; for,

1. Said exception would serve to deter corrupt-minded agents of a State from violating, for their own personal profit, privileges and protections guaranteed to every citizen by said Amendments and by-laws.

2. Said exception would serve to deter such agents from committing against a citizen such federal felonies as kidnapped detention in a madhouse for 31 years, and subjection of him therein to sadistic treatment deliberately calculated to wreck his physical and mental health -- all in retaliation for his having attempted, and having continued to attempt, to expose recidivism-promoting activities of employees of the State.

B). The Eleventh Amendment, without said exception,

- 1) flagrantly allows a State to commit any conceivable crime against a citizen, without to any degree diminishing

its competence to exercise jurisdiction over a consequent suit he might want to institute against it;

2) inescapably justifies the implications inherent in the following dilemma:

If Congress, in legislating the Eleventh Amendment, was dedicated to our inalienable rights as citizens of this Nation, it did not intend that the immunity of said Amendment should apply in a situation such as exists in relator's case; and if Congress was then dedicated to political connivance in federal crimes perpetrated by a State against a citizen, Congress was immoral undemocratic and criminal in character.

But either Congress, in legislating the Eleventh Amendment, was dedicated to our inalienable rights as citizens of this Nation; or Congress was then dedicated to political connivance in federal crimes perpetrated by a State against a citizen.

Therefore, either Congress, in legislating the Eleventh Amendment, did not intend that the immunity of said Amendment should apply in a situation such as exists in relator's case; or Congress was then immoral undemocratic and criminal in character.

IT WOULD REQUIRE A SPECIALLY DEvised SYSTEM OF LOGIC -- NOT

TENABLE IN DEMOCRATIC FORMS OF GOVERNMENT -- TO VALIDLY INFER
ANYTHING NOT CONSONANT WITH BENEFIT TO A STATE, FROM AN EX-
CEPTION TO THE ELEVENTH AMENDMENT URGENTLY NEEDED TO DETER
STATE-COMMITTED FEDERAL FELONIES AGAINST CITIZENS OF THIS
NATION.

IV

This Court Has The Authority To Correct, And Should Correct, The Unintentional Oversight Of Congress In Failing To Include An Exception To The Eleventh Amendment, Allowing The Victim Of State-Committed Federal Felonies To Sue The State In Federal Court; for,

A). "Courts have always asserted and exercised authority which though perhaps not expressly established by statute, is based upon the inherent right and duty of the Courts to protect the citizen in his constitutional prerogatives and to prevent oppressions of persecutions."

People v. Gerewitz, 294 N.Y. 163.

People ex rel. Sais v. Martin, 189 N.Y. 471.

To same effect --

People ex rel. Sabatino v. Jennings, 221 App. Div. 418, 223 N.Y.S. 124 (1927), 246 N.Y. 258, 158 N.E. 613 (1927).

B). The interests of no one may be impaired constitutionally to the extent of offending "traditional notions of fair play and substantial justice."

International Shoe Co. v. Washington, 310 U.S. 66 S.Ct. at 158 (1945).

C). The Courts, since the birth of the Eleventh Amendment in 1795, have, for the most part, slammed their doors against

argument for repeal thereof, and, alternatively, for inclusion of exception thereto. Our evolving society has reached a point, however, where it can no longer tolerate a closed-mind attitude toward the issues involved in the prohibition. Even as mounting evidence forced man to alter his long-established belief that the earth was flat, the evidence in relator's case, examined under the supervision of logic, constitutional guarantees, morality, and public interest, points up the urgent need of an exception to the Eleventh Amendment. Lack of the needed exception is a blood clot in one of the main arteries of justice.

The persuasions that brought forth the Eleventh Amendment prohibition, and the judicial reasoning that subsequently sustained and extended it, did not contend, explicitly, implicitly, or by the slightest suggestion, that the prohibition be construed as a state prerogative to commit major federal felonies against a citizen of this nation.

It cannot be logically assumed, therefore, that, in establishing the Amendment, Congress intended inclusion therein of cases (such as relator's) centered in such crimes; nor that, in sustaining and extending the prohibition, the courts so intended.

Furthermore, the records of relator's state-court litigations, of the matters basic to instant action, suggest

an extremely low probability of him obtaining justice in such courts -- thereby implying that relator, in effect, exhausted his state remedies, and that the State, in effect, waived its Eleventh Amendment immunity.

What persuasions, consonant with an ordered society, do you lean upon to convince yourselves and others that crime is immoral, contemptible, and a cancer within the heart of this nation? is a question citizens, concerned for the respect and welfare of their government, will want to put to those who endorse the Eleventh Amendment prohibition, in the absense of an exception thereto in cases arising from state-committed major federal felonies, and who, by virtue of such endorsement, in effect sanction such crimes. Citizens, so concerned, do not believe that a State should be permitted, under any guise, much less encouraged, to teach by example -- with the support of said Amendment -- that it is profitable to commit crime against a citizen of this nation.

These facts, relator submits, indicate, beyond reasonable doubt, that, to preserve the rights and privileges guaranteed by the Constitution, the guardians of the Constitution should rule, and are indeed obligated to rule, that relator's case constitutes an exception to the Eleventh Amendment prohibition against a citizen suing a State in a federal court.

NO STATE THAT HAS COMMITTED MAJOR FEDERAL FELONIES AGAINST

A CITIZEN THEREOF SHOULD BE ALLOWED IMMUNITY FROM CONSEQUENT
SUIT IN FEDERAL COURT UNDER THE ELEVENTH AMENDMENT, OR UNDER
ANY LAW OR PRINCIPLE OF COMITY.

CONCLUSION

If the controlling judicial constructions to date of the Eleventh Amendment of the Constitution of the United States are applied to relator's case, absent the exception thereto he seeks, the definition of said Amendment must be understood to mean that, constitutionally, a State, without diminishing its immunity under said Amendment,

1) may corruptly suppress a citizen's deposition directed to a court of law;

2) may corruptly accomplish the suppression of such deposition with a Star Chamber lunacy proceeding which in turn accomplishes his incarceration in a madhouse;

3) may corruptly detain him in such madhouse for 31 years, completely incommunicado for the first 3 years and intermittently thereafter, in all matters of a legal nature;

4) may corruptly subject him, during said detention, to brutalities and sadistic indignities calculated to wreck his physical and mental health;

5) may corruptly deny him parole in 1948 and absolute discharge in 1953;

6) may corruptly moot a jury trial of the issues involved in his case, ordered for him 1969 by this Court;

7) may corruptly and consistently evade answers to his repeated submission of these allegations, directly supra, to courts of law, both state and federal; and

8) may corruptly escape from the concatenation of legal and logical consequences of said evasions -- which may be summarized thus:

that, by virtue of "presumptions of law", said allegations must be regarded as true and beyond current and subsequent legal attack;

that said presumptions fulfill the necessary and sufficient requirements of the legal definition of kidnapping; and

that, in satisfying said definition, the State

rendered itself incompetent to exercise jurisdiction over a suit the victim of said kidnapping may want to institute against it --

waived its right of immunity under the Eleventh Amendment -- and, in effect,

consented to be sued by the victim of said kidnapping, in federal court: in the same sense that a hired killer in effect consents to the lawful penalty therefor.

Affirmation of such a definition of the Eleventh Amendment, in turn,

1) would tend to constitute approval of the Star Chamber manner by which, in 1795, said Amendment was jammed into the Constitution;

2) would tend to ignore the highly probable fact that no member of Congress, current or prior, not afflicted with an undemocratic dictator-like complex, would want to go on record as approving the application of the Eleventh Amendment immunity to a State which, through corrupt hired agents, engaged in such federal crimes as kidnapped detention of a sane citizen in a madhouse for 31 years -- as a means of preventing him from helping the public free itself of the crushing burden of recidivism; and

3) would tend to assure the States that no major federal felony they might deliberately commit against a citizen of this Nation -- however heinous -- would serve to deprive them of jurisdiction over any consequent suit such citizen might institute against them --

all in face of the fact that no tenable concept of justice, derived from the sound principles of due process of law, fair procedure, and competent jurisdiction, would tolerate the Eleventh Amendment absent the exception thereto relator seeks.

If a State of this Nation, upon committing such crimes, may constitutionally act as judge and jury of its own guilt, the citizen-victim of such crimes would be justified in observing that, at the very least, we of this Nation must not be surprised upon being stamped more than a little hypocritical, when we raise indignant voices against lack of human rights and fundamental decencies in other countries of this world.

RELIEF SOUGHT

Wherefore, in accord with the relief warranted by the facts evidence and arguments presented hereinabove, relator prays that this Court will see fit

1) to declare that a suit brought against a State by the victim of one or more major federal felonies deliberately committed by such State, constitutes an exception to the Eleventh Amendment, since such State thereby renders itself incompetent to exercise jurisdiction over such suit, waives in effect its right of immunity under said Amendment, and

consents in effect to be sued in federal court by the victim of its crimes;

2) to rule that relator's instant proposed suit against the State of New York satisfies the necessary and sufficient requirements of said exception; and

3) to order that relator's said suit be heard before a jury in the United States District Court for the Southern District of New York, within 60 days of said order --

all so that the citizens of this Nation may be constitutionally assured that the Eleventh Amendment immunity (allowing a State in effect to act as judge and jury of its own guilt) does not apply to a State guilty of deliberately committing, through corrupt agents it evidentially empowers to commit, such crimes as the State of New York, through such agents, deliberately committed against relator.

Roy Schuster

Roy Schuster - Pro Se Relator
502 W135th St., Apt.1B
New York, N.Y. 10031
Tel: (212) 926-6125

Subscribed and sworn to before me
this 25th day of April, 1977.

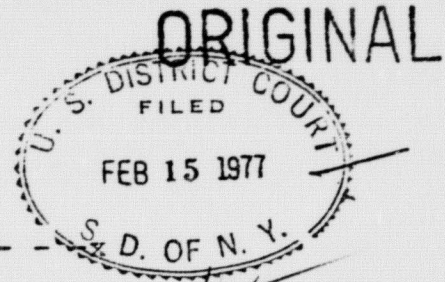
Venus Harris

Notary Public

VENUS C. HARRIS
NOTARY PUBLIC, State of New York
No. 31-4616306
Qualified in New York County
Commission Expires March 30, 1979

APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



ROY SCHUSTER,

Plaintiff,

-against-

STATE OF NEW YORK,

Defendant.

: 76 Civ. 4185

: MEMORANDUM
: DECISION

: PRO SE

-x

GAGLIARDI, D. J.

Plaintiff, Roy Schuster, by his pro se complaint, seeks to recover from the State of New York damages resulting from his involuntary commitment in a state mental institution for over thirty years. The State of New York moves to dismiss the complaint, pursuant to Rule 12(b)(6) Fed. R. Civ. P., for failure to state a claim upon which relief can be granted.

The unfortunate history of the State of New York's unconstitutional mistreatment of Mr. Schuster has been carefully set forth in two opinions of the Second Circuit Court of Appeals. United States ex rel. Schuster v. Vincent, 524 F.2d 123 (2d Cir. 1975); United States ex rel. Schuster v. Herold, 410 F.2d 1071 (2d Cir.), cert. denied, 396 U.S. 847 (1969). Pursuant to those decisions Mr. Schuster was discharged from state custody. He currently is residing in New York State.

FEB 15 1977

[42]

While the court is sympathetic to the claims of Mr. Schuster, the Eleventh Amendment to the United States Constitution is an absolute bar to his suit against the State of New York in federal court. Edelman v. Jordan, 415 U.S. 651, 662-63 (1974). The Eleventh Amendment provides:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

While the Amendment on its face does not bar suits against a State by its own citizens, the Supreme Court has consistently held "that an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State."

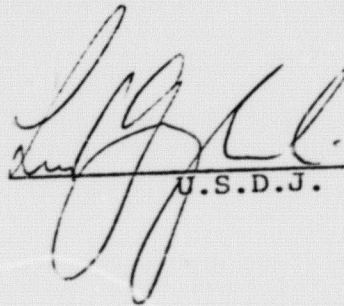
Edelman v. Jordan, supra at 662-63, citing Hans v. Louisiana, 134 U.S. 1 (1890); Duhne v. New Jersey, 251 U.S. 311 (1920); Great Northern Life Insurance Co. v. Read, 322 U.S. 47 (1944); Parden v. Terminal R. Co., 377 U.S. 184 (1964); Employees v. Department of Public Health and Welfare, 411 U.S. 279 (1973). There is no indication that the State of New York has consented to waive its immunity in this case.

Plaintiff claims an exception to the Eleventh Amendment prohibition because he alleges that there is a low probability of his obtaining justice in the state courts after the state treatment he has suffered. This

court does not recognize such an exception where the plaintiff is only suing New York State to recover damages for past mistreatment.¹ It appears that plaintiff's claims against New York State can be made only, if at all, in the Court of Claims of the State of New York.

Defendant's motion to dismiss, pursuant to Rule 12(b)(6) Fed. R. Civ. P., is granted.

So Ordered.

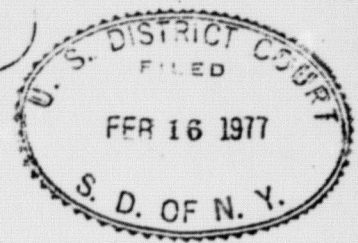


U.S.D.J.

Dated: New York, New York
February 14, 1977.

[457] *Gagliardi, J.*

12



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
ROY SCHUSTER

Plaintiff : 76 Civil 4185 (LPG)

-against-

STATE OF NEW YORK : JUDGMENT
Defendant :
----- X

Defendant having moved the Court to dismiss, pursuant to Rule 12(b)(6), of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Lee P. Gagliardi, United States District Judge, and the Court thereafter on February 15, 1977, having handed down its memorandum decision, granting the said motion, it is,

ORDERED, ADJUDGED and DECREED: That defendant STATE OF NEW YORK have judgment against plaintiff ROY SCHUSTER dismissing the complaint.

Dated: New York, N. Y.
February 16, 1977

Raymond F. Bugghett
Clerk

MAR 8 1977

[46]

PRO SE OFFICE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Roy Schuster, Plaintiff	:	76 Civ. 4185
: v.	:	Gagliardi, J
State of New York, Defendant.	:	Pro Se

NOTICE OF APPEAL

Notice is hereby given that Roy Schuster, plaintiff above named, hereby appeals, to the United States Court of Appeals for the Second Circuit of New York, from each and every part of the MEMORANDUM DECISION AND ORDER (Gagliardi, J) of the United States District Court for the Southern District of New York, dated February 14, 1977 and filed and entered in above entitled proceeding February 15, 1977, in which the Court erred in denying the relief sought, by ignoring the main issues of plaintiff's arguments that his case constitutes an exception to the Eleventh Amendment.

Roy Schuster

Roy Schuster - Plaintiff
502 W135th St., Apt. 1B
New York, N.Y. 10031
Tel: (212) 926-6125

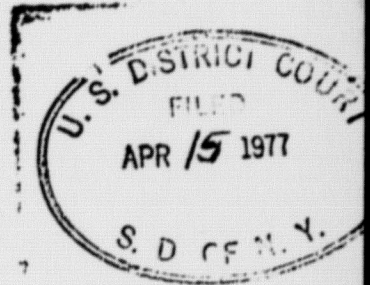
X Roy Schuster

Subscribed and sworn to before me
this 22nd day of February, 1977.

Venus Harris

Notary Public

VENUS C. HARRIS
NOTARY PUBLIC, State of New York
No. 31-4616306
Qualified in New York County
Commission Expires March 30, 1977



UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

ROY SCHUSTER,

Plaintiff,

Action Number

: 76 Civ.4185 LPG

-v-

STATE OF NEW YORK

Defendant.

NOTICE OF APPEAL

TO

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Notice is hereby given that ROY SCHUSTER
above named, hereby appeals to the United States Court of
Appeals for the Second Circuit from the *decision and order
U.S.D.C. - S.D.N.Y. (Gagliardi,D.J.) denying and dismissing his
complaint on 2/15/77

April 15, 1977.

Notice to:

Roy Schuster
502 W. 135 St., Apt. 1B
New York, N.Y. 10031

Signed

M. Watts

By: Mrs. M. WATTS
Deputy Pro Se Clerk

Attorney General State of New York
Litigation Bureau
Two World Trade Center
New York, N.Y. 10047

UNITED STATES GOVERNMENT

Memorandum

FROM : Judge Gagliardi

DATE: 4/1/77

TO : Frances Salten
Pro Se Clerk

SUBJECT: Schuster v. New York, 76 Civ 4185

The attached notice of appeal and motion to proceed in forma pauperis were received in the Pro Se Office on 2/24/77 and are submitted to your Honor for consideration. The movant did ~~ask~~ ask to proceed in forma pauperis in the original action. Leave was granted on 9/15/76.

I have been delayed in processing this request for leave to proceed in forma pauperis because your secretary does not send me two copies of your opinions in pro se cases, as per procedure, and in accordance with my memo of approximately October 1.

If your Honor decides to deny the motion, please state in writing the reasons for the denial, in accordance with Rule 24(a) of the Rules of Appellate Procedure.

If the movant was permitted to proceed in forma pauperis in the original action, s/he may now do so again, in accordance with above-cited Rule, unless the District Court shall certify that the appeal is not taken in good faith, or shall find the party otherwise not entitled so to proceed, in which event the District Court shall state in writing the reasons for such certification or finding. If there is no objection, please endorse "No objection" on this memo and return to us for further processing.

Respectfully submitted

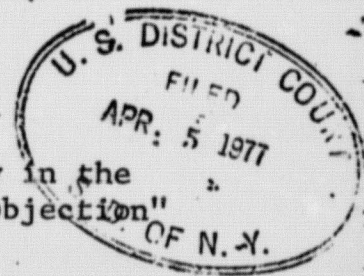
Frances Salten

P.S. Please ask your secretary to begin sending me two copies of pro se opinions as per procedure, as I do not have the staff to call your chambers or unit for the necessary information on each case. If this were done, it would save chambers a good bit of time

Attach:

4-5-77

As law clerk to Judge Gagliardi, who is currently in the hospital, I have been authorized to endorse "No objection" on this memo.



BEST COPY AVAILABLE

Kenneth Raisler *K.R.*
Law Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Roy Schuster, Plaintiff

v.

State of New York, Defendant.

76 Civ. 4185

Gagliardi, J

Pro Se

APPLICATION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Roy Schuster, being duly sworn, depose and say:

I am the plaintiff named in the above entitled action; and, pursuant to the provisions of §1915 of 28 U.S.C., do hereby pray for leave of this honorable court to file the above application for leave to proceed on appeal without prepayment of cost of fees and to proceed in forma pauperis, because

1. I am a citizen of the U.S.A., a resident of the State of New York, and over the age of 21 years.

2. I am wholly indigent within the meaning of the law, being dependable for my living on an SSI Social Security check of \$228.65 monthly, and am unable to obtain any assistance in paying any costs or fees that may be incurred in this action or in posting surety for same.

3. I am to the best of my knowledge and belief, entitled by law to the relief being sought.

Roy Schuster
X *Roy Schuster*

Roy Schuster - Plaintiff
502 W135th St., Apt.1B
New York, N.Y. 10031

Subscribed and sworn to before me
this 22nd day of February, 1977.

X *Venus C. Harris*

Notary Public

VENUS C. HARRIS
NOTARY PUBLIC, State of New York
No. 31-4616306
Qualified in New York County
Commission Expires March 30, 1977

United States District Court

FOR THE
SOUTHERN DISTRICT OF NEW YORK

caption: Roy Schuster, Plaintiff
→ v.
State Of New York, Defendant

No. 76 Civ. 4185 GLG

Affidavit in Support of Motion on Appeal in Forma Pauperis

I, Roy Schuster, being first duly sworn, depose and say that I am the plaintiff, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. 1931: \$150.00 per wk.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months. SSI check: \$228.65, since Sept, 1975, sole income.

3. Do you own any cash or checking or savings account?

a. If the answer is yes, state the total value of the items owned. \$640.8500 not deposable.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? NO.

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons. none.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury. I declare the foregoing to be true and correct.

Date: March 5, 1977

SIGN

Roy Schuster

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

<u>Roy Schuster, Plaintiff</u>	:	76 Civ. 4185
v.	:	Gagliardi, J.
<u>State of New York, Defendant.</u>	:	Pro Se

APPLICATION FOR CERTIFICATE OF PROBABLE CAUSE

Plaintiff, in the matter named above, hereby applies to this Court for a Certificate of Probable Cause, so that he may proceed with an appeal to the United States Court of Appeals for the Second Circuit, from the MEMORANDUM DECISION AND ORDER, in above entitled action, filed and entered by this Court on the 15th day of February, 1977.

Plaintiff believes that the facts and evidence and issues involved in this matter, when considered together, are sufficiently substantial and cogent to merit and warrant the Declaratory Judgment he seeks.

Plaintiff further believes that he can convince the court above that he is entitled to said judgment.

Roy Schuster

Roy Schuster - Plaintiff
502 W135th St., Apt.1B
New York, N.Y. 10031

Subscribed and sworn to before me
this 22nd day of February 1977.

Venue C. Harris

Notary Public

VENUE C. HARRIS
NOTARY PUBLIC, State of New York
No. 31-4616303
Qualified in New York County
Commission Expires March 30, 1977

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT OF NEW YORK

ROY SCHUSTER, Petitioner-Appellant,	:	Pro Se Appeal From
v.	:	U.S.D.C., S.D.
STATE OF NEW YORK, Respondent-Appellee.	:	Re: 76 Civ. 4185

AFFIDAVIT OF SERVICE

I, Roy Schuster, petitioner-appellant above named, being duly sworn, hereby affy that, via United States certified mail, I have served upon Louis J. Lefkowitz, Att. Gen. of State of New York, Two World Trade Center, New York, N.Y. 10047, one copy of my brief and appendix directed to the United States Court Of Appeals for the Second Circuit of New York.

Roy Schuster

Roy Schuster- Petitioner-Appellant
502 W135th St. #1B
New York, N.Y. 10031
Tel: 926-6125

Subscribed and sworn to before me
this 25th day of April, 1977.

Venus Harris

Notary Public

VENUS C. HARRIS
NOTARY PUBLIC, State of New York
No. 31-4616306
Qualified in New York County
Commission Expires March 30, 1979